HIGH COURT OF UTTARANCHAL, AT NAINITAL

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Application No. 68 of 2004

Date of Decision : 6th March, 2006

A.F.R. (Approved for reporting)

Not approved for reporting

Date Initial of

Judge.

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 68 of 2004

Laxmichand
S/o Sri Ram Diya
R/o Bahadarabad
District – Haridwar ... Applicant

Versus

1. State of Uttaranchal
2. District & Sessions Judge Chamoli
3. Constable No. 17 Sushil Kumar
4. Mohlad
5. Naresh S/o Late Chawla
   R/o Village Atmalpur Bongla
   District – Haridwar ... Respondents

Sri Navneet Kaushik, learned counsel for the applicant
Sri Nandan Arya, learned A.G.A. for the State.
Sri Subhash Chandra Tyagi, learned counsel for the respondent Nos. 3 to 5.

Hon'ble J.C.S. Rawat, J.

This petition u/s 482 Cr.P.C. has been filed to quash the order dated 20.12.2003 passed by respondent No. 2 in S.T. No. 05 of 2002 u/s 311 Cr.P.C.

Brief facts for the disposal of this petition are that viral was pending before the court of learned Sessions Judge, Chamoli. During the trial the prosecution evidence was closed and thereafter DW-1 DR. R.K. Sundriyal was examined and thereafter learned D.G.C. on behalf of the prosecution moved an application on 20.12.2003 to recall the witnesses PW6-Kapil Tyagi and DW1 Dr. R.K. Sundriyal. He has further alleged that Navin Chandra Joshi and Raj Pal Singh are the important witnesses of the fact and their evidence has been produced and prosecution could not put certain question in examination in chief to PW6-Kapil Tyagi and DW1-Dr. R.K. Sundriyal. The prayer was made to summon them u/s 311 of the Cr.P.C.

The learned trial court after hearing of the parties came to the conclusion that that there is no justification to summon both the witnesses as indicated in the witnesses.

I have heard learned counsel for the parties and perused the record.

It is pertinent to mention here that PW6 was examined on 12.03.2003 and thereafter DW1 was examined on 03.12.2006. Thereafter an application was moved on 20.12.2003 after lapse of ten months when the prosecution witness was examined. Thereafter, the present application has been filed. Perusal of the application reveals that the prosecution has not stated in his application which are the relevant questions that are to be put to the witnesses. It was obligatory on the part of the prosecution to disclose the facts in the application so that the court could come to the conclusion that those questions are decisive for the proper decision of the trial. Apart this PW6 was examined about 10 months back and thereafter lapse of 10 months the prosecution filed this application without giving the reason as to why the witness was to be re-examined. After lapse of 10 months it would not be proper without any cogent reason to recall the said witness. Whereas DW1-Dr. R.K. Sundriyal is concerned, it is not mentioned what questions are to be put to him during the cross examination and why his cross examination is essential.

In view of the above discussion, I am of the view that the petition devoids of merit is liable to be dismissed and is dismissed accordingly.

(J. C. S. Rawat, J.)

6th March, 2006
Shiv